IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/10/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

W.P.No.18650 of 2003
and W.P.Nos. 18651, 18780, 19879, 19888, 20077, 21029, 21030, 21239
, 21261, 21262, 24751, 26609, 22505, 22486, 20964, 21661, 21659,
22948, 22995, 23150, 23151, 23874, 25358, 22926, 23154,
16658 and 16682 of 2003

and

W.M.P.Nos.23322, 23324, 23495, 24842, 24861, 25076, 26137, 26139, 263
98, 26413, 26415, 30430, 32511, 27833, 27812, 26055, 26846, 26843, 28
379, 28428, 28615, 28617, 29452, 31164, 28345, 28621, 20843 and 20866
of 2003

W.P.NO.18650 OF 2003

Viveka Poorana Aided Elementary
School, rep. by its Secretary
R.Aravamudhan
Cuddalore Old Town Cuddaore ...Petitioner

-Vs-

1.The Director of Elementary Education
Madras 6

2.The District Elementary Educational
Officer, Cuddalore.1, Cuddalore District.

3.The Additional Assistant Elementary
Educational Officer, Cuddalore ...Respondents

Petition under Article 226 of the Constitution of India praying to
issue a writ of certiorari calling for the records pertaining to the impugned
proceedings issued by the third respondent Director of Elementary Education in
Na.Ka. No.25873/AC1/2002, Na.Ka.No.45914/W6/2003 dated 26.05.2003 and
Na.Ka.3478/A3/2003 dated 28.5.2003 (prohibiting the appointment of teachers in
private schools from 01.06.2003), quash the same.

For Petitioners : Mr.S.Kamadevan in WP 18650/03

For Respondents :Mr.V.R.Rajasekaran, Spl.GP for
Mr.R.Vijayakumar, GA in
WP.No.18650/03

:COMMON ORDER

The entire batch of cases are filed for issuance of a writ of certiorari to call for the records pertaining to the impugned proceedings issued by the third respondent Director of Elementary Education in Na.Ka.No.25873/AC1/2002 and Na.Ka.No.45914/W6/2003 dated 26.05.2003 and Na.Ka.3478/A3/2003 dated 28.5.2003 (prohibiting the appointment of teachers in private schools from 01.06.2003), quash the same.

2.Petitioners in all the writ petitions are private aided schools receiving aid from the Government and they have posts sanctioned by the Court under various Rules and Orders. While so, the impugned circulars dated 26.5.2003 and 28.5.2003 have been issued by the Director of School Education directing all its District Educational Officer and others that there is a proposal under consideration by the Government to degrade some of the posts in Elementary school, middle school, High schools and also in teacher training institution. Therefore, from 1.6.2003 no vacancies shall be filled up until further orders. Similarly on the same date the Director of Elementary Education has also passed similar circular. Therefore, all the minority or non minority schools, which are receiving aid from the Government, could not fill up any of the vacancies subsequent to 1.6.2003. Therefore, the writ petitions have been filed to quash the circulars.

3. No counter has been filed in spite of repeated adjournments.

4.The learned counsel for the petitioners submitted that these circulars are contrary to the Rules framed under the Act. Rules specifically provide for appointment of teachers as soon as vacancies arise. By this circulars that has been prevented. Therefore, these circulars are contrary to the Rules and on that ground alone, the proceedings have to be struck down as invalid.

5. The learned counsel also points out that in similar situation on an earlier occasion in a batch of case, this Court has passed an order on 16.8.1999 in W.P.Nos.10237 of 1998 batch. In that the circular impugned therein is referred to is as follows:-
"The Director of education, while the matter was under serious consideration of the Government relating to the appointment of a high power committee on the basis of representations made by the management of several aided private educational institutions, has issued the impugned order on the ground that the Government had proposed to issue revised norms and guidelines for pupil-teacher ratio, to the effect that vacancies that arose due to death, retirement, voluntary retirement, resignation etc. In aided elementary schools, high schools and higher secondary schools should not be filled up with effect from 1.6.1994 till the issue of the revised new norms by the Government."

The validity of the circular was decided in that case; while quashing the impugned circular therein, the learned Judge further held that:

"I hold that by the imposition of the ban on filling up of vacancies of teachers, the fundamental right of the pupils to get education is affected. Moreover, the effect of the executive order passed by the Director of Education is that some of the provisions of Private Schools Act and the Private Schools Rules have become inoperative. It is relevant to notice that posts of teachers in private educational institutions are sanctioned posts and when subjects have been sanctioned and teachers have also been sanctioned depending upon the number of pupils in a particular school, I hold that it is not open to the Director of Education to impose a ban on the appointment of teachers."

The learned Judge finally held as follows :-

"Therefore, I hold that the orders passed by the Director of Education are not sustainable in law and they are liable to be quashed and accordingly, quashed. Consequently, the orders refusing to grant approval to the appointments made on the basis of the impugned orders issued by the Director of Education are also not sustainable in law."

6.The decision rendered by this Court in that batch of writ petitions is squarely applicable to the facts of the present case. In the present batch also a similar ban has been imposed by the same " Director of School Education" by circulars, which are almost identical with the circulars quashed earlier by this Court. In spite of the above decision rendered by this Court in a similar situation when a circular was issued prohibiting the filling up of a sanctioned posts when vacancy arose, the respondents have once again issued identical circulars which appears to have been done without taking due and proper care. Had the Director of School Education taken a litter more care or had the Director of School Education referred the matter for legal opinion, this circular would not have been issued, causing embarrassment to the Government. It is also bordering an act of contempt of court.

7.The learned Special Government Pleader Mr.Rajasekaran submitted that these circulars have been replaced by a Government Order subsequently and as the Government Order has taken the place of the impugned circulars, the circulars are no more in force and hence, hence, the writ petitions are to be dismissed as infructuous.

8. The Government Order No.100 dated 27.6.2003 has been produced by the learned counsel for the petitioners; a perusal of which would show that it applies only to schools maintained by the Panchayat Union and the Government Schools. There is special provisions in paragraph 5 of the Government Order that this Government Order does not govern the private schools which are receiving aid f rom the Government and with respect to those schools, separate order will be passed. Therefore, the learned counsel for the petitioners submitted that the Government Order 100 does not make the writ petitions infructuous as that Government Order does not apply to the

petitioners.

9.This argument of the learned counsel for the petitioners is acceptable. The Government Order 100 dated 27.6.2003 applies only to schools under the Panchayat Unions and the Government Schools; it does not apply to the private schools (both minority and non minority) which receive aid from the Government. Therefore, the impugned circulars are still in force.

10.The impugned circulars are in the nature of administrative instructions. A Division Bench of this Court held as early as 1956 in K. MUTHUVADIVELU vs. REGIONAL TRANSPORT OFFICER, VELLORE, N.A. DISTRICT AND ANOTHER (AIR 1956 MADRAS 143) that statutory Rule cannot override the provisions of an Act. The Supreme court in the case THE CENTRAL BANK OF INDIA AND OTHER vs. THEIR WORKMEN ETC., (AIR 1960 SUPREME COURT 12), held that a "Rule must yield to the statute". Following this various High Courts have considered the nature of Rules, Regulations, by-laws and administrative instructions issued by the authorities. From the principles laid down by various High Courts including Madras High Court it can be safely stated that the inter relationship between Act, Rules, Regulations, by-laws, administrative instructions has been laid down by judicial pronouncements, and the cardinal principles of interpretation of statutes are as follows:
(i) a circular issued by any authority cannot over ride a Government Order;
(ii) an administrative order passed by way of a Government Order cannot over ride Statutory Rules framed under an Act;
(iii) a Statutory Rule cannot override the provisions of an Act passed by the legislature;
(iv) an Act cannot override the provisions of the Constitution.

11. It appears that these principles or the legal maxim was ignored by the authorities when the impugned circulars were issued. The circulars are against the Government Orders by which posts were sanctioned in various schools; the circulars which imposes a ban on appointment to fill up the posts sanctioned by Government Orders are against the Government Orders and hence, they are not legally sustainable.

12.Learned counsel appearing for some of the petitioners represented that in some of the cases by virtue of interim order obtained from this Court appointments have been made specifically subject to the Government Order that may be passed. Inasmuch as the Government Order No.100 dated 27.6.2003 does not govern the appointments in private aided school, that Government Order is not applicable to them. Hence, those appointments will have to be considered as valid notwithstanding the impugned circulars. In some other cases, some appointments have already been made before 1.6.2003 but approval has not been given in view of the impugned circulars. Inasmuch as the impugned circulars are held invalid in so far as it relates to the writ petitioners and inasmuch as no Government Order has been passed so far relating to the aided private schools the appointments made does not suffer from any illegality; in so far as the appointments made before the issuance of the impugned circular there is no ground to refuse the grant of approval. But it is for the authorities to consider the same and pass orders. Hence, the respondents are directed to consider those cases within four weeks from the

date of receipt of copy of this order and pass orders.

13. In result, with the above directions the writ petitions are allowed. No costs. Consequently connected WPMPs are closed.

Index : Yes
Internet : Yes

bg.

To
1.The Director of Elementary Education
Madras 6

2.The District Elementary Educational Officer, Cuddalore.1, Cuddalore District.

3.The Additional Assistant Elementary Educational Officer, Cuddalore